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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1943

No. 983.

SAMUEL O. BLANC,
Petitioner,

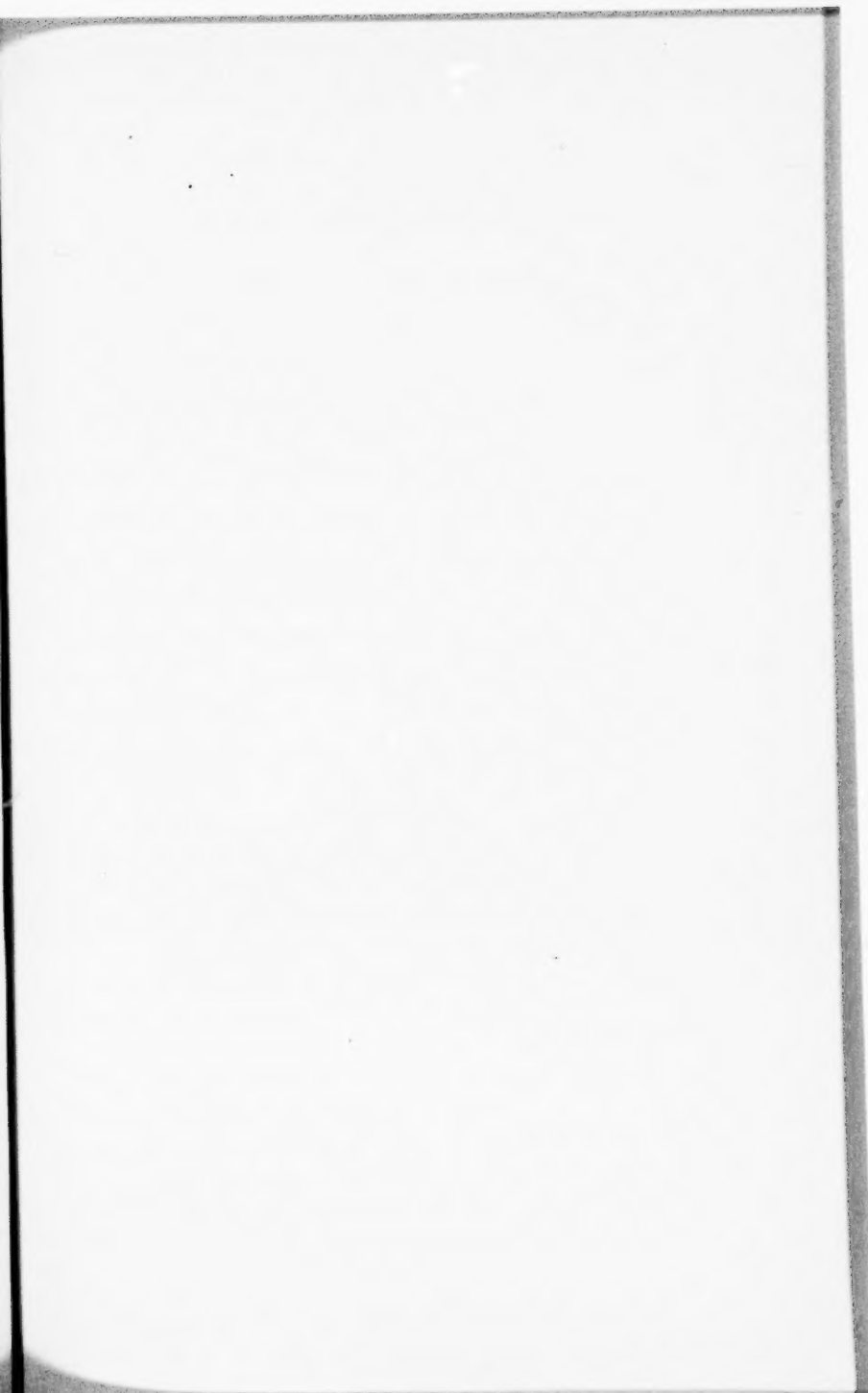
vs.

AL CAYO, doing business as
CAYO ELECTRIC MACHINE,
Respondent.

**PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.**

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PETITION FOR WRIT OF CERTIORARI

*To the Honorable, the Chief Justice and Associated Justices
of the Supreme Court of the United States:*

Your petitioner, Samuel O. Blanc, prays that a writ of certiorari should issue to review the decree of the United States Circuit Court of Appeals for the Sixth Circuit entered December 16, 1943, (R. 253), rehearing denied February 14, 1944 (R. 281).

A certified transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith, in compliance with Rule 38 of the rules of this Court.

Summary Statement of the Matter Involved.

This is a suit brought by petitioner against respondent for infringement of petitioner's Patent No. Re. 22,113, issued July 16, 1942, and based on original patent No. 2,111,527, dated March 15, 1938, and Patent No. 2,069,871, issued February 9, 1937. Patent No. 2,069,871 relates to a cutter designed particularly for cutting penetrating roots from the interior of sewer pipes by the operation of a sewer cleaning machine forming the subject matter of Reissue Patent No. 22,113 which automatically imparts to the cutter the power and motion required for cutting roots from the sewer to clean the same. For convenience, these patents will be referred to as the "Cutter Patent" and the "Machine Patent," respectively.

The District Court for the Western District of Michigan, Southern Division, held claims 4, 5, 7, 8, 9, 10 and 11 of the Machine Patent invalid for lack of invention, and not infringed, and claims 1 to 6 of the Cutter Patent not infringed (R. 29).

The Court of Appeals for the Sixth Circuit affirmed the decree of the District Court dismissing the complaint, on the predicate of non-infringement by respondent of any of the claims in suit, in either the Machine or Cutter Patents (R. 253).

This petition is directed to a review of the decision of the Court of Appeals as to the Machine and Cutter Patents.

Jurisdiction.

1. This is a suit arising under the Patent Laws of the United States, Judicial Code, Sec. 24 (7) (28 U. S. C., Sec. 41 (7)).

2. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

3. The date of the judgment which petitioner seeks to have reviewed is December 16, 1943 (R. 253). The petition for rehearing was denied February 14, 1944 (R. 281).

Questions Presented.

The decision of the Circuit Court of Appeals for the Sixth Circuit presents the following questions:

1. Whether the conflict between the decision of the Circuit Court of Appeals for the Sixth Circuit in this cause and the decisions of the Circuit Court of Appeals for the Eighth Circuit and the District Courts therein, with respect to the scope and interpretation of the patents in suit, should be resolved in order that the public at large may be properly advised as to what devices and mechanisms constitute infringements of the patents in issue.

2. Whether the Circuit Court of Appeals for the Sixth Circuit properly held respondent's machine and cutters not to infringe the patents in suit, in view of the construction and interpretation given said patents by that Court in its prior decision in *Blanc v. Curtis*, 119 Fed. 2d, 395.

3. Whether the supervisory authority of this Court should be exercised in reviewing the decision in this cause in the interest of the public and the uniform application of federal justice, where, as in this case, the decision is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit in *Blanc v. Curtis*, 119 Fed. 2d 395, which established a precedent with respect to infringement of the claims of the patents then in issue and is in conformity with and has been followed in cases involving the same patents in the Eighth Circuit.

4. Whether the Court of Appeals' perfunctory approval of the District Court's decision in this cause or the prior decision of the Court of Appeals in the case of *Blanc v. Curtis*, 119 Fed. 2d 395, with respect to the scope and interpretation of the claims of the patents herein in issue, should prevail; a question of vital importance to the public and which should be determined by this Court, especially in view of the apparent intention of the Court of Appeals in this cause to follow its prior decision.

Reasons for Granting the Writ.

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following grounds:

1. Conflict with prior decision of the Court of Appeals for the Sixth Circuit.

(a) The Court of Appeals for the Sixth Circuit has held the claims of petitioner's patents in suit not infringed by respondent's machine and cutters, whereas in the earlier case of *Blanc v. Curtis*, 119 Fed. 2nd 395, the Court in considering the claims of the original of the Reissue Machine Patent and the Cutter Patent evaluated petitioner's contributions in the art and in construing the claims then in issue ascribed to petitioner's inventions the very devices complained of in this cause.

2. Confusion and conflict exists between decisions of the Court of Appeals for the Sixth Circuit and prior decisions of the Circuit Court of Appeals for the Eighth Circuit and the District Courts within said Circuit.

(a) In deciding the case of *Blanc v. Curtis*, 119 Fed. 2nd 395, the Court emphasized that its decision with respect to the patents was in conformity with the decisions reached by the District Court in the cases of *Blanc v. Weston*, 33

U. S. P. Q. 466, *Blanc v. Weston*, 35 U. S. P. Q. 150 and *Blanc v. Weston, et al.*, 42 U. S. P. Q. 427, whereas the decision in the present cause is inconsistent and in clear conflict with said decisions in the Eighth Circuit.

(b) The burden of resolving the conflict existing between the decisions of the Court of Appeals for the Sixth Circuit in this cause and in *Blanc v. Curtis*, 119 Fed. 2d 395, with respect to infringement of the Cutter Patent places the public in an embarrassing position for the reason that either construction which said Court of Appeals has apparently placed on the claims of said patent is inconsistent with either the decision of the Court of Appeals for the Eighth Circuit in the case of *Blanc v. Weston*, 109 Fed. 2nd 911, or the decisions of the District Court in the cases of *Blanc v. Weston*, 33 U. S. P. Q. 466 (8th Circuit), *Blanc v. Weston*, 35 U. S. P. Q. 150 (8th Circuit), and *Blanc v. Longstaff* and *Blanc v. Smith*, 58 U. S. P. Q. 54 (8th Circuit).

(c) The decision of the Court of Appeals for the Sixth Circuit in the present cause with respect to infringement conflicts with the decisions of the District Court for the Southern District of Iowa, Southern Division, in the cases of *Blanc v. Longstaff* and *Blanc v. Smith*, 58 U. S. P. Q. 54, in which the prior case of *Blanc v. Curtis*, 119 Fed. 2nd 395, was recognized as establishing a precedent with respect to the subject matter involved, and in which the Court on the basis of such authority held machines and cutters conforming in substance to those of respondent's in this cause to be infringements of the Machine and Cutter Patents.

3. Public interest involved.

(a) Because of the utter confusion and lack of uniformity which has resulted because of the conflict of decisions with respect to infringement of the Machine and Cutter Patents, it is of great public interest that such conflict be

resolved and the scope and interpretation of the claims of said patents judicially determined to secure consistency and uniformity in the administration of federal justice with respect to these patents.

Wherefore, it is respectfully submitted that a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit should be granted.

GORDON F. HOOK,
Counsel for Petitioner.

